



NOV 17 2005

OFFICE OF  
SOLID WASTE AND EMERGENCY  
RESPONSE**MEMORANDUM**

**SUBJECT:** Short-Term Recommendation About Inspections To Meet The Energy Policy Act Of 2005 Requirements

**FROM:** Cliff Rothenstein, Director *Cliff Rothenstein*  
Office of Underground Storage Tanks

**TO:** State UST Managers  
EPA UST Regional Division Directors

I am writing to update you about implementing the Energy Policy Act of 2005, provide a short-term recommendation about site inspections, and give a brief overview of the Act's underground storage tank (UST) provisions which significantly affect federal and state programs. EPA is currently working to develop guidance on implementing the various UST provisions in the Act, and we expect to complete the guidance on inspections by April 2006. In the meantime, I encourage state UST programs to continue conducting on-site inspections as discussed below.

**Brief Overview Of The Energy Policy Act**

As you know, President Bush on August 8, 2005 signed Public Law 109-58, the Energy Policy Act of 2005. Title XV, Subtitle B of this Act (entitled the Underground Storage Tank Compliance Act of 2005) contains amendments to Subtitle I of the Resource Conservation Recovery Act – the original legislation that created the federal UST program. This new law significantly affects state and federal underground storage tank programs and will require major changes in them. Additionally, gas station owners and operators, as well as non-marketers who own or operate USTs, will be impacted by the changes states and EPA make in their tank programs.

The Underground Storage Tank Compliance Act focuses on preventing releases. Among other things, the Act expands eligible uses of the Leaking Underground Storage Tank (LUST) Trust Fund, extends the LUST Trust Fund tax through 2011, and includes provisions regarding inspections, operator training, delivery prohibition, secondary containment and financial responsibility, and cleanup of releases that contain oxygenated fuel additives.

Some of these provisions require implementation by August 2006; others will require implementation in subsequent years. EPA is working closely with states, tribes, other federal agencies, tank owners and operators, and other stakeholders to implement these mandated changes affecting underground storage tank facilities.

To view the full text of this new legislation, see: [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109\\_cong\\_public\\_laws&docid=f:publ058.109.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ058.109.pdf) (scroll to Title XV – Ethanol And Motor Fuels, Subtitle B – Underground Storage Tank Compliance, on pages 500-513).

### **Specifics About Continuing Inspections**

Under Section 1523 of the Energy Policy Act of 2005, EPA or states which receive Subtitle I funding shall conduct on-site inspections by August 8, 2007 of all tanks which have not undergone inspection since December 22, 1998. Following the completion of this task, EPA or states that receive Subtitle I funding shall conduct on-site inspections of all regulated tanks at least once every three years.

We have established an inspections workgroup, composed of EPA and state members, to help develop guidance covering inspections. While we work on the guidance, I urge you to continue performing on-site inspections at UST facilities. I encourage you to focus your inspections on facilities with USTs in place on or before December 22, 1998 and which have not been inspected since December 22, 1998. For inspections conducted in the period from August 8, 2005 to the date of the publication of our guidance, we will consider any on-site inspection as meeting the new inspection requirements as long as the inspection is:

- conducted by a state, local (when contracted or delegated by a state), EPA, or certified third-party inspector; and
- sufficient to determine compliance with federal UST requirements in Subtitle I or state requirements that are part of a state UST program EPA has approved under the state program approval (SPA) procedures.

### **Next Steps**

EPA expects to publish final guidance on inspections by April. I will continue to share with you important information about the inspection requirements, as well as other requirements in the Underground Storage Tank Compliance Act, as we move forward with implementation.

My staff and I look forward to working with you to implement this important provision of the Underground Storage Tank Compliance Act. If you have questions about the inspection requirements, contact Jerry Parker at [parker.jerry@epa.gov](mailto:parker.jerry@epa.gov) or 703-603-7167. For more information about EPA's efforts to implement the law, contact Mark Barolo at [barolo.mark@epa.gov](mailto:barolo.mark@epa.gov) or 703-603-7141.

cc: EPA UST Regional Branch Chiefs  
EPA UST Regional Program Managers  
OUST Managers  
OUST Regional Liaisons